

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

EDWARD R. RHODES & JEAN ANN	)	
RHODES,	)	
	)	Civil Action No.: 1:20-CV-267[GTS/CFH]
Plaintiffs,	)	
	)	
vs.	)	
	)	
PHOENIX ARMS,	)	
	)	
Defendant.	)	

**DEFENDANT PHOENIX ARMS, INC.'S NOTICE OF REMOVAL**

Defendant, PHOENIX ARMS, INC. s/h/a PHOENIX ARMS (“PHOENIX ARMS”), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, notifies this Court that it is removing the above captioned action currently pending in the Supreme Court of the State of New York County of Schoharie to the United States District Court for the Northern District of New York. In support, Phoenix Arms states as follows:

**INTRODUCTION**

1. On January 28, 2020, Plaintiffs filed their Complaint against Phoenix Arms in the Supreme Court of the State of New York County of Schoharie.
2. Phoenix Arms was served with the Complaint on February 10, 2020. This notice of removal is timely filed within thirty (30) days after Phoenix Arms was served.
3. The United States District Court for the Northern District of New York is the federal judicial district encompassing Schoharie County. Therefore, venue lies in this Court pursuant to 28 U.S.C. § 1441(a).
4. Copies of all papers, pleadings, process, and orders, if any, served on Phoenix Arms are attached as Exhibit A, including the Summons and Plaintiffs’ Complaint (“Compl.”).

### **DIVERSITY JURISDICTION**

5. The basis for removal to federal court is diversity jurisdiction pursuant to 28 U.S.C. § 1332, because (a) there is complete diversity of citizenship between Plaintiffs, on the one hand, and the defendant Phoenix Arms on the other hand, and (b) the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000.00).

6. Phoenix Arms is a corporation organized under the laws of the state of California with its principal place of business in San Bernardino County, California. Thus, for the purposes of diversity jurisdiction, Phoenix Arms is a citizen of California.

7. Plaintiffs are both citizens of New York and reside in the Town of Conesville, County of Schoharie. (Compl. at ¶ 1).

### **BACKGROUND**

8. Plaintiffs' action arises from an incident that occurred on or about June 23, 2019 when Plaintiff Edward R. Rhodes was allegedly struck by a bullet from a Phoenix Arms HP22 pistol (the "Subject Pistol") that discharged when it fell from a gun safe in his home. (*Id.* at ¶ 7).

9. Plaintiffs allege that Phoenix Arms "manufactured, distributed, and sold" the Subject Pistol "that was subject to failure during normal use that the weapon would discharge even though the hammer had been placed in the safety position" (*Id.* at ¶ 9).

10. Plaintiffs further allege that the Subject Pistol "contained a defect or defects that made it unreasonably dangerous when used in the manner and for the purpose for which it was intended" and specifically that "it incorporated a rigid-block that were subject to failure when used as intended such that the weapon was subject to unintentional discharge when the hammer was placed in the safety position" (*Id.* at ¶ 13).

11. Plaintiffs assert five claims against Phoenix Arms: Negligence (Id. at ¶¶ 1-11); Strict Liability (Id. at ¶¶ 12-16); Loss of Consortium (Id. at ¶ 17); Breach of Implied Warranty of Merchantability (Id. at ¶¶ 18-25); and Failure to Warn (Id. at ¶¶ 26-37).

### **AMOUNT IN CONTROVERSY**

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy is greater than \$75,000, exclusive of interest and costs.

13. Removing defendants must show that it appears “to a reasonable probability” that the claimed amount in controversy exceeds the statutory jurisdictional threshold. Mehlenbacher v. Akzo Nobel Salt, Inc., 216 F. 3d 291, 296 (2d Cir. 2000). If it is facially apparent from the complaint that the amount in controversy exceeds the removal threshold, the amount in controversy requirement is satisfied.

14. Plaintiffs’ Complaint alleges that Plaintiff Edward R. Rhodes sustained “serious injuries and damages” including a “gunshot injury to the left proximal tibial diaphysis.” (Compl. at ¶ 11). Plaintiff Edward R. Rhodes’ injuries are alleged to be ongoing. (Id. at ¶ 34). Additionally, Plaintiff Jean Ann Rhodes alleges “she has been deprived of the familial relationship including the care, sexual relations, companionship, household help, emotional support and love of her husband.” (Id. at ¶ 17).

1. Plaintiffs’ counsel has also informed Phoenix Arms that Plaintiff Edward R. Rhodes suffered a non-displaced oblique fracture to his left knee as a result of the alleged incident. Further, our office was informed that Plaintiff Edward R. Rhodes underwent surgery after the alleged incident, that bullet fragments remain in his left leg, that he continues to undergo physical therapy, and that he requires the aid of a cane to walk. (See Declaration of Counsel, attached as Exhibit B and Exhibit C).

15. Given the extent of the injuries claimed by the Plaintiffs and the scope of the damages that are asserted against Phoenix Arms, the Complaint, on its face, seeks compensation far in excess of the jurisdictional threshold of \$75,000. (See id.).

16. Because both of the requirements for federal diversity jurisdiction under 28 U.S.C § 1332 are satisfied, i.e., complete diversity of citizenship exists between the Plaintiffs, on the one hand, and Phoenix Arms, on the other hand, and the amount in controversy exceeds the statutory minimum, this action is properly removed.

17. Prompt written notice of this Notice of Removal is being sent to Plaintiffs through their counsel, and a copy of this Notice of Removal is being filed with the Clerk of the Supreme Court of the State of New York County of Schoharie, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Phoenix Arms, Inc., hereby gives notice that this action is removed from the Supreme Court of the State of New York County of Schoharie to the United States District Court for the Northern District of New York.

DATED: March 10, 2020.

Respectfully submitted,

**RENZULLI LAW FIRM, LLP**

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*Attorneys for Phoenix Arms, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of March, 2020, I caused to be served a copy of the foregoing document on all counsel of record listed below, via First Class Mail to:

Caitlin Robin  
**CAITLIN ROBIN & ASSOCIATES, PLLC**  
30 Broad Street, Suite 702  
New York, New York 10004

/s/ Christopher Renzulli  
Christopher Renzulli  
RENZULLI LAW FIRM, LLP  
*Attorneys for Defendant Phoenix Arms, Inc.*